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September 17, 1993

RM-8303

BY HAND DELIVERY

William Caton
Office of the Secretary
Federal Communications Commission
1919 M Street, Room 222
Washington, D.C. 20554

Dear Mr. Caton:

Enclosed is an original and five copies of Reply Comments of Petitioners titled "In the Matter of: Petition For Rulemaking To Determine The Terms And Conditions Under Which Tier 1 LECs Should Be Permitted To Provide InterLATA Telecommunications Services." This petition is filed pursuant to 47 C.F.R. § 1.401. Please return a date-stamped copy of the petition to the person delivering this package. Copies have been served on all parties who filed comments in this proceeding.

Sincerely,

Michael Kellogg

Michael K. Kellogg

Enclosures

No. of Copies rec'd 0+5
List A B C D E

Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Petition For Rulemaking To Determine The Terms And Conditions Under Which Tier 1 LECs Should Be Permitted To Provide Interexchange Telecommunications Services	)	R.M.- 8303

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SUMMARY

This rulemaking is premised on the proposition, long supported by the Commission, that regulatory safeguards are preferable to a facially anticompetitive market quarantine. This has been consistent FCC policy for a decade now -- on information services, on CPE, on long distance -- and, where allowed to operate, it has borne remarkable fruit in terms of an enhanced infrastructure, lower costs for consumers, and high-quality, good-paying jobs for American workers.

But the MFJ restrictions, which set up absolute barriers to entry, are at direct loggerheads with FCC policy. And they have a real cost, as illustrated by the recent series of lock-step price increases by the oligopoly long-distance carriers. These increases, carried out despite rapidly declining access charges, are costing American consumers billions of dollars annually. They are also costing large numbers of jobs. A recent study estimated that the elimination of all telecommunications entry restrictions could create as many as 3.6 million additional jobs over the next ten years. One could argue over the exact extent of the expected impact, but the direction of the impact (the creation of many good, high-paying, high-tech jobs) is indisputable.

Under established Commission principles, the local exchange "bottleneck" is not a justification for a regulatory quarantine. It should be considered even less of a justification now that it is eroding. And the rate of erosion will rise dramatically with switched-access collocation, new entry by CAPs and cable companies,

the allocation of 420 MHz of new wireless spectrum, and the AT&T/McCaw merger.

Whatever the degree of erosion, however, the critical point is that regulatory safeguards can be made to work in this context, just as they have been made to work for BOC participation in the information services and CPE markets. Prior to BOC participation in both these markets, the same sort of complaints and forebodings were voiced about the inadequacy of regulatory safeguards. Yet, in both markets, the FCC has substituted regulatory safeguards for a regulatory quarantine, and competition is flourishing. Prices are down, output is up, and most significantly there has never been even the slightest hint that the BOCs have attained anything resembling market power.

The telecommunications marketplace is undergoing rapid and profound changes, and the issue of how to manage the transition to a fully competitive marketplace is as important as any facing the Commission today. The D.C. Circuit has made it clear that the initiative lies with the FCC. The time has come, then, for the Commission to follow through on its commitment to the D.C. Circuit and to determine the terms and conditions under which the BOCs should be permitted to provide interexchange services. As Morton Bahr, President of the Communications Workers of America, recently stated: "It's time -- time to remove these outdated restrictions and let American workers in our nation be prosperous."

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REPLY COMMENTS OF PETITIONERS

In our rulemaking petition we demonstrated that there is no price competition in the long distance market and that, by contrast, competition is coming to the local exchange, particularly by way of wireless communications. No sooner did we file our petition than AT&T announced that it was raising long distance prices by $500 million; MCI and Sprint quickly followed suit. Hard upon that, AT&T announced a $12.5 billion merger into local wireless operations. Then, the FCC ordered expanded interconnection to the local loop for switched access services and issued plans to allocate some 220 MHz of new spectrum. Now Congress has ordered that at least another 200 MHz of spectrum be made available and has given the FCC a deadline to conduct PCS auctions.

With AT&T jumping headlong into local wireless and with at least 420 MHz of spectrum going on the auction block, the whole shape of the industry is changing. But there is a grave danger that the current oligopoly structure of the long distance market, with AT&T dominating and a complete absence of price competition, will soon be duplicated in the wireless market. Indeed, by default, the

whole industry may soon be dominated by the vertically integrated AT&T/McCaw.

The purpose of this rulemaking is to ensure that the changes taking place in telecommunications result in a truly competitive marketplace, with all the concomitant benefits of lower prices, higher output, and the creation of quality jobs. The rulemaking is not, as some would suggest, premised on the total elimination of market power in the local exchange. It is premised on the proposition, long supported by the Commission, that regulatory safeguards are preferable to a facially anticompetitive market quarantine.

Those opposing the proposed rulemaking call for delay. The FCC should not act now, they contend, it should wait . . . until it has more resources, or . . . until Congress has a chance to act, or . . . until the MFJ court decides to remove the restriction on its own initiative, or . . . until the various state commissions remove barriers to local competition, or . . . until complete competition has come to the local exchange.

It is not surprising that the commenters opposing the petition should take this view. All of them are, in one form or another, competitors in the interexchange market and, as the D.C. Circuit explained in United States v. FCC, 652 F.2d 72, 97 (1980) (en banc), existing competitors "have a natural interest in inhibiting future competition and delaying future competitive entry."

But this matter cannot and should not wait. The telecommunications marketplace is undergoing rapid and profound

changes, and the issue of how to manage the transition to a fully competitive marketplace is as important as any facing the Commission today. If the Commission is to fulfill its statutory mandate and retake the policy initiative in this area, it should not waste precious time playing Alphonse and Gaston with Congress and the Courts. Congress has granted the FCC all the rulemaking authority it requires. And the D.C. Circuit has made it clear that the initiative now lies with the FCC, not the courts. The industry is being transformed today, and everyone is looking to the Commission to lead the way.

The time has come, then, for the Commission to follow through on its commitment to the D.C. Circuit and to determine the terms and conditions under which the BOCs should be permitted to provide interexchange services.

I. The FCC Has Both The Authority And The Duty To Set The Terms And Conditions For BOC Provision Of Interexchange Service

A number of commenters point out that the FCC has no authority to order the antitrust courts to remove the MFJ provision that prevents the BOCs from providing interexchange services. That is irrelevant. The Commission has not only the authority, but the duty, to determine the terms and conditions under which the BOCs should be permitted to provide interexchange services. The Commission has already made similar determinations for GTE, United Telecom and, most recently, Puerto Rico Telephone Company.[1] The

[1] Application of GTE Corp. (Southern Pacific Transfer), 94 F.C.C.2d 235 (1983); United Telecommunications, Inc., 98 F.C.C.2d 1306 (1984); Inquiry into Policies to be Followed in the

Commission has expressly told the D.C. Circuit that it would promulgate such rules for the BOCs prior to permitting them to enter the long distance market.[2] And the D.C. Circuit has made it clear that once adequate safeguards are in place decree relief will follow.

That is the usual order of things. The FCC put in place most of the Computer III safeguards governing BOC provision of information services on an unseparated basis at a time when the BOCs were still barred from providing content-based information services.

Authorization of Common Carrier Facilities to Provide Telecommunications Service off the Island of Puerto Rico, 2 F.C.C. Rcd. 6600 (1987).

[2]Reply Comments of The Federal Communications Commission As Amicus Curiae at 11, United States v. Western Elec. Co., No. 82-0192 (D.D.C. May 22, 1987). For this reason, Capital Network Sys. Inc.'s argument (Br. at 6) that the petition is "moot" because no FCC rule prohibits the BOCs from providing IX service is frivolous. The Commission has made it clear that the BOCs will require Section 214 approval prior to offering interstate service and that such approval will not be forthcoming until the Commission sets out the general rules governing BOC participation. Responsive Comments Of The Federal Communications Commission As Amicus Curiae at 59, United States v. Western Elec. Co., No. 82-0192 (Apr. 27, 1987).

Equally frivolous is the suggestion (Allnet Br. at 1 n.1) that the Regional Bell Operating Companies have no standing to represent their operating companies in a petition of this sort. As an initial matter, it is not just the operating telephone companies that are currently precluded from providing interexchange service. The regional holding companies are as well. Beyond this, parent companies frequently appear at the FCC on behalf of their wholly-owned operating subsidiaries. See, e.g., In re BellSouth Petition for Waiver of Section 32.4240 of the Commission's Rules to Permit Amortization of Debt Refinancing Expenses, Unamortized Discounts and Premiums Associated with Reacquired Debt Either Over the Life of the Replacement Issue or Over the Remaining Life of the Called Debt Issue, 4 F.C.C. Rcd 387 (1988); In re BellSouth Corporation On Behalf of Southern Bell Telephone and Telegraph Company, 5 F.C.C. Rcd 2827 (1990); In re BellSouth Corporation on Behalf of Southern Bell Telephone and Telegraph Company, 3 F.C.C. Rcd 6961 (1988).

The rulemaking was not premature. It was one of the predicates for the antitrust relief, which followed and relied upon the FCC's regulatory regime. See United States v. Western Elec. Co., 993 F.2d 1572, 1580-1581 (D.C. Cir. 1993).

By promulgating rules, the FCC sets up a regulatory structure that defines the environment for others, including the Courts. The FCC is supposed to lead in this business, not follow. That is what the Court of Appeals has made clear. FCC action is thus the critical step in the transition to the fully competitive marketplace that the Commission has been advocating for nearly two decades.

II. BOC Entry Into The Concentrated Long Distance Market Would Benefit The Economy And Create Thousands Of High-Quality Jobs

The current long distance market is highly concentrated and not at all price competitive. Even the opposing commenters do not dare to claim otherwise. We have cited considerable, independent evidence of this lack of price competition, including the FCC's own study on umbrella pricing. See Petition at 10-14. See also P. Huber, et al., The Geodesic Network II: 1993 Report on Competition in the Telephone Industry, Chapter 3 (Geodesic Publishing Co. 1993).

That evidence was strongly confirmed by the recent AT&T price hike, which MCI and Sprint both followed so readily. On July 19, 1993, AT&T announced that it would increase business rates by an average of 3.9 percent and residential rates by an average of 1 percent.[3] A variety of telecommunications industry watchers

[3]A. Zitner, AT&T Seeks Hike in Rates, Boston Globe, July 20, 1993 at 1.

immediately forecast increases by the other two major long-distance companies. For example, Craig Ellis, analyst at Wheat, First Securities in Richmond, Virginia, said, "[t]he betting is that other phone companies will follow suit now that the umbrella has been raised by the market dominator."[4] As an indicator of investor sentiment, shares of all three companies rose on the day of AT&T's announcement.[5] True to predictions, four days after the AT&T filing, MCI proposed rate increases of 3.8 to 4.1 percent; Sprint followed with filed increases of 3.8 to 4.7 percent one week later.[6]

How did the analysts know that MCI and Sprint would follow suit, rather than maintaining or even dropping prices to gain market share? Because they know that the long distance market is an oligopoly and not price competitive. The July 19 price hike was, in fact, just the latest in a series of lock-step price increases by the big three long distance carriers. See **FIGURE 1.**

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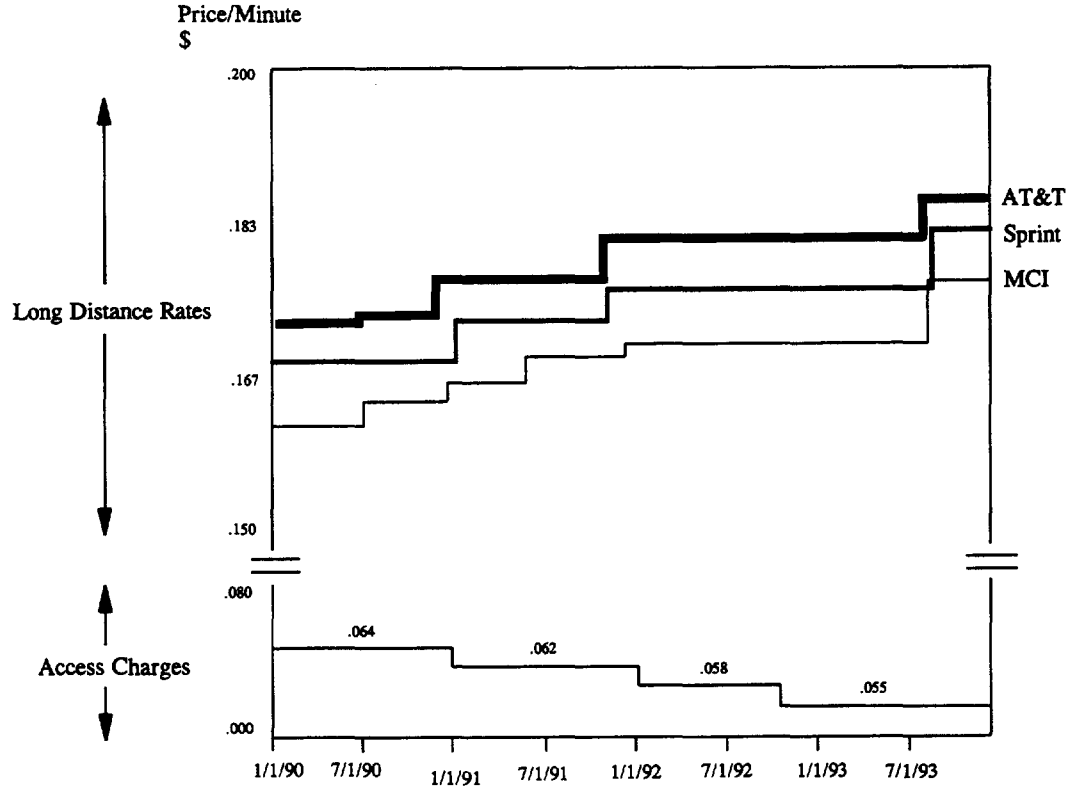
[4]C. Lazzareschi, AT&T Rate Hike Takes Aim at Businesses, Los Angeles Times, July 20, 1993, at D1.

[5]A. Zitner, AT&T Seeks a Hike in Rates, Boston Globe, July 20, 1993, at 1.

[6]R. Gareiss, Rate Hikes: MCI, Sprint Follow AT&T's Lead, Communications Week, Aug. 9, 1993, at 60.

Figure 1. Trends in Long Distance Rates and Exchange Access Charges.[1]



[1]WEFA Group, Economic Impact of Eliminating The Line-of Business Restrictions on the Bell Companies (July 1993); Robin Gareiss, Rate Hikes: MCI, Spring Follow AT&T's Lead, Communications Week, August 9, 1993, at 60. With the exception of the most recent rate increase, long distance rates are based on the average price per minute for basic service. For the most recent rate increase, MCI and Sprint rates are estimated as the average of their stated range of rate increases. AT&T rates are estimated as the average of its proposed business rate increase and its smaller proposed residential rate increase--a conservative estimate, considering that more revenue comes from business customers than from residential customers.

Despite steadily decreasing access charges,[7] the long distance carriers have raised prices no fewer than four times in the past three years. On each occasion, AT&T led the way, and the other two followed. There seems, in fact, to be a not-so-tacit understanding among the three carriers that they will raise prices in unison and avoid price competition at all costs. For example, in July 1990, after the first in this series of price hikes, an MCI spokesman expressly stated that MCI would match any future AT&T rate increases.[8] With respect to the most recent rise in prices, AT&T spokesman Mark Siegel stated: "We have no reason to think [the price hike] won't hold. It's routine. We do it all the time. We've raised prices six times in the past five years and they've all

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[7]CompTel argues that access charges have in fact gone up recently, relying on a letter written by AT&T to Senator Inouye in which "AT&T explained that recent RBOC filings have actually raised access charges a total of $20 million" (at 8). This letter, however, is patently incorrect. It contains an Attachment that purports to counterbalance the July 1993 decrease in LEC access charges (rightly noted at $250 million), with various increases in charges for such items as "LEC Information Database" and "LEC Number Portability." But the access charge reductions were on regular switched access, which mainly includes access for MTS service to residential customers and small businesses, precisely the service for which AT&T and the other carriers raised prices. The supposed increases in costs that AT&T cites, however, are not for MTS service. They are for new specialized services such as the Line Information DataBase for validating collect and credit card calls and number portability for 800 service. These charges provide not even a semblance of justification for raising the price of MTS calls. Beyond this, AT&T is relying on a fictitious $20 million rise in access charges to justify a $500 million increase in prices to consumers.

[8]See B. Wallace, MCI Responds to AT&T Rate Hike with Increases, Network World, July 30, 1990, at 14.

held."[9] A senior vice president of MCI added: "We move prices in lock step."[10] MCI issued a statement that "competition has moved away from price. We think there is price stability in the industry now."[11] Sprint likewise announced that "customers are looking for more than price * * *. Sprint's approach is to differentiate itself through product and service offerings, not merely price."[12]

An analyst with Sanford C. Bernstein and Company explains that this "is just a great time for the long distance business * * *. These companies know they have a choice * * *. They can keep beating each other up, or they can let their core long-distance business become more profitable."[13] In this market environment, where the three largest carriers can signal each other through the newspaper and raise prices with impunity, new entry is the only hope for consumers. As the D.C. Circuit has stressed, "[f]reedom of entry is the single most important guarantor of competition in a concentrated industry." United States v. FCC, 652 F.2d 72, 106 (1980).

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[9]D. Dorfman, Pro Hears Static on Long Distance, USA Today, Aug. 2, 1993, at 2B.

[10]See C. Skrzycki, 'Baby Bells' Dangle Promise of Lower Rates in Push for Long-Distance Service, Washington Post, July 22, 1993, at D9. The MCI spokesman went on to add, "but we move prices down," but that claim is belied by the evidence.

[11]See C. Lazzareschi, AT&T Rate Hikes Takes Aim at Businesses, Los Angeles Times, July 20, 1993, at D1.

[12]A. Zitner, AT&T Seeks a Hike in Rates, Boston Globe, July 20, 1993, at 1.

[13]E. Andrews, Long-Distance Giants Find Strength Amid Price Wars, N.Y. Times, July 23, 1993, at D1.

New entry is also likely to stimulate large numbers of new jobs. Indeed, industry analysts have estimated that the elimination of all entry restrictions could create as many as 3.6 million additional jobs over the next ten years.[14] One could argue over the exact extent of the expected impact, but the direction of the impact (the creation of many good, high-paying, high-tech jobs) is indisputable. There is, in fact, solid historical evidence for it based on the removal of the information services restriction.

Take, as just one small example, the voice-mail industry. Voice mail can be provided by an answering machine located on the customer's premise or by voice mailboxes provided by a centralized service bureau. Competition in this market is thus between simple, mass-produced consumer electronics and service-based, central-office substitutes. Nearly all the answering machines in the United States are of course manufactured in Taiwan or somewhere else far from the United States.[15] But the centralized service-bureaus are here in the United States and employ American workers in high-quality technical and sales jobs.

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[14]WEFA Group, Economic Impact of Eliminating the Line-of-Business Restrictions on the Bell Companies (July 1993).

[15]As a U.S. Senate Committee recently noted, "the CPE market has been dominated increasingly by foreign suppliers, especially Asian ones." S. Rep. No. 41, 102d Cong., 1st Sess. 13 (1991). The Department of Commerce has likewise concluded that "[t]here is very little U.S. production of commodity-type products, such as telephone sets, telephone answering machines and facsimile machines." Dep't of Commerce U.S. Industrial Outlook 1993, at 29-4. In 1992, the U.S. trade deficit in CPE was already approximately $3 billion. Id. at 29-2.

The BOCs were precluded from providing voice-mail service until 1988. In the first two years after the ban was lifted, prices declined dramatically and the number of voice mailboxes grew from 5.3 million to 11.6 million. Voice-mail revenues were $1.3 billion in 1992, up from a mere $35 million in 1984.[16] That dramatic increase in revenues translates directly into more than twenty thousand high-quality, good-paying jobs for American workers[17] and indirectly into numerous other jobs as that money works its way through the U.S. economy.

With the removal of the interexchange prohibition, the same impact should result on a much larger scale. It is for just this reason that the Communications Workers of America, the principal telecommunications labor union, has solidly supported BOC entry into the long distance business.[18] The CWA is by no means alone. The

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[16]Revenues are estimated to rise to $3.3 billion by 1999. Surge Predicted for Voice Mail Services Market, Telecommunications Alert, March 1, 1993.

[17]If one takes the current experience of Pacific Bell as illustrative for the voice-mail industry as a whole, there is approximately one employee for each $60,000 in gross revenues.

[18]At a press conference introducing the WEFA study cited in note 14, Morton Bahr, President of the Communications Workers of America stated:

> The study released today illustrates two significant things: It shows the powerful extent to which America should be able to benefit from its telecommunications industry; and secondly, it shows the crippling effect of outdated public policy in blocking these potential benefits from becoming a reality. * * * It's time -- time to remove these outdated restrictions and let American workers in our nation be prosperous.

Transcript at 11-12.

National Organization of the International Brotherhood of Electrical Workers has argued that "far too many American jobs * * * have been lost since the Modification of Final Judgement was issued,"[19] and that "[b]y barring these firms from pursuing other business options, you are also limiting potential job opportunities for the employees of these companies, many of whom are members of our union."[20] Other unions, such as the Amalgamated Clothing and Textile Workers Union,[21] and the American Federation of State, County and Municipal Employees (AFSCME),[22] have also supported a relaxation of particular MFJ restrictions.

III. The Commission Can Design Adequate Regulatory Safeguards To Ensure That The BOCs Cannot Use Their Market Power In The Local Exchange To Impede Competition In The Interexchange Market

A number of commenters claim that the BOC petition "is premised on the view that competitive entry in the local exchange and exchange access markets has eliminated BOC monopoly power and thus removed the justification for the interLATA prohibition." Centex at 1. See also MCI at 2. That is flatly incorrect. While it is clear that the level of local exchange competition is increasing, this

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[19]Letter to The Honorable Jack Brooks from J. J. Barry, International President, IBEW (May 19, 1992).

[20]Ibid.

[21]Letter to Morton Bahr, President, Communications Workers of America, from Jack Sheinkman, President, Amalgamated Clothing and Textile Workers Union (Sept. 26, 1991).

[22]Letter to Morton Bahr, President, Communications Workers of America, from Gerald W. McEntee, International President, American Federation of State, County and Municipal Employees, AFL-CIO at 1 (Sept. 17, 1991).

rulemaking petition is premised on the proposition, long supported by the Commission, that regulatory safeguards are preferable to a facially anticompetitive market quarantine, notwithstanding the market power of local exchange carriers. This has been consistent FCC policy for a decade now, on information services, on CPE, and on long distance.

The Commission was firm from the outset in its view that the decree restrictions on the BOCs were, notwithstanding the local exchange monopoly, both "unnecessary and unwise."[23] "Any provision that precludes any business enterprise from participating in any business activity," the Commission explained, "is a barrier to competition. Such a provision deprives the public of the benefits that might flow from actual or potential entry by the excluded firm."[24] "[T]he proposed restrictions on the divested BOCs," the Commission stated emphatically, "would do more harm than good and thus are not 'in the public interest.'"[25]

In 1987, the Commission again supported removal of the restrictions. The Commission noted that "the record three years after divestiture now establishes that there is little likelihood of competitive harm from BOC entry into most of the markets

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[23]Brief of the Federal Communications Commission as Amicus Curiae on Stipulation and Modification of Final Judgment at 30, United States v. Western Elec. Co., No. 82-0192 (D.D.C. Apr. 22, 1982).

[24]Ibid.

[25]Brief of the Federal Communications Commission as Amicus Curiae on Question No. 1 on Stipulation and Modification of Final Judgment at 11, United States v. Western Elec. Co., No. 82-0192 (D.D.C. June 14, 1982).

proscribed by the decree. At the same time," the Commission explained, "actual experiences since divestiture demonstrate the public welfare losses that have resulted from the entry barriers to a number of important telecommunications-related markets that have been imposed on seven entities with substantial technical and financial resources."[26]

The Commission stated that, if the restriction were removed, it would fashion appropriate regulations governing BOC participation in long-distance markets to prevent discrimination and cross-subsidy. The Commission carefully explained that it did not "advocate 'freeing the BOCs' to exploit their obvious advantages without safeguards. Rather," the Commission stated, "the absolute restrictions should be removed in reliance on regulatory safeguards and oversight."[27]

Recently, the Commission rejected the suggestion that it condition Puerto Rico Telephone's entry into the long distance business on the presence of local competition in Puerto Rico.[28] In short, the Commission has never considered the local exchange "bottleneck" to be a justification for a regulatory quarantine. It should be considered even less of a justification now that it is

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[26]Comments of the Federal Communications Commission as Amicus Curiae at 7, United States v. Western Electric Co., No. 82-0192 (Mar. 13, 1987).

[27]Reply Comments of The Federal Communications Commission As Amicus Curiae at 11, United States v. Western Elec. Co., No. 82-0192 (D.D.C. May 22, 1987).

[28]Inquiry into Policies to be Followed in the Authorization of Common Carrier Facilities to Provide Telecommunications Service Off the Island of Puerto Rico, 8 F.C.C. Rcd. 63, 66 (1992).

eroding.[29] And the rate of erosion will rise dramatically with switched-access collocation, new entry by CAPs and cable companies, the allocation of 420 MHz or more of new wireless spectrum, and the AT&T/McCaw merger.[30] But the BOCs do not, as some would suggest, claim that every segment of the local exchange business is equally competitive.

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[29]Some commenters dispute that there has been any degree of erosion at all. For example, AT&T states that 99.86% of the access charges it paid last year went to the LECs. See Statement of Robert E. Allen Before the Senate Subcommittee on Communications at 9 (Sept. 8, 1993). What AT&T neglects to mention is that its "large customer" tariffs, including Megacom, are specifically designed to permit those customers to arrange for access directly from CAPs. Thus, although the access charges directly paid by AT&T might go largely to the LECs, the access charges paid by large businesses, which generate a substantial portion of local access revenues, need not. Recent surveys indicate that a large proportion -- between 62 percent and 77 percent -- of larger business customers rely on CAPs for at least part of their access services. See Pacific Telesis ex parte, Dkt. Nos. 91-141 and 91-213 (F.C.C. Apr. 29, 1992); J. Kraemer, Deloitte & Touche, Competitive Assessment of the Market for Alternative Local Transport (1991). According to a survey by the Yankee Group, only about half of all virtual private network customers opt for access through their local telco rather than using direct dedicated links to the interexchange carrier. E. Booher, Virtual Network Equals Savings, Computerworld, Mar. 5, 1990, at 51. See also B. Wallace, Firm Installs SDN, Waits on Tariff 12, Network World, Sept. 4, 1989, at 1; John Hancock Completes Cutover from WATS to SDN; Change Expected to Save Firm $1.2M Annually, Network World, Aug. 27, 1990, at 2. J. Dix, Communications Options; The World Beyond AT&T, Computerworld, Dec. 30, 1985/Jan. 6, 1986, at 33.

[30]CompTel expresses doubts (Br. at 11-12) that PCS will ever compete with landline services. But this Commission has concluded otherwise, projecting 60 million PCS users in the next decade. In re Amendment of the Commission's Rules to Establish New Personal Communications Services, 7 F.C.C. Rcd 5676 (July 16, 1992) (NPRM & Tentative Decision). The AT&T/McCaw merger and new spectrum allocations have merely increased that likelihood. And, contrary to AT&T's public predictions, PCS will plainly be a substitute for, not merely a complement to, the local wireline exchange. AT&T plans completely to bypass the local exchange, feeding long distance calls directly from its wireless switches into its long distance network. See **Attachment 1** (proposed AT&T PCS network).

The critical point is that, contrary to what the opponents of this rulemaking say, regulatory safeguards can be made to work in this context, just as they have been made to work for BOC participation in the information services and CPE markets. Prior to BOC participation in both these markets, the same sort of complaints and forebodings were voiced about the inadequacy of regulatory safeguards.[31] Yet, in both markets, the FCC has substituted regulatory safeguards for a regulatory quarantine, and competition is flourishing. Prices are down, output is up, and most significantly there has never been even the slightest hint that these telcos have attained anything resembling market power.[32]

For example, since divestiture, all of the BOCs have entered the CPE segment of the equipment market in one way or another. But none of the BOCs has even approached market domination. According

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[31]For example, in 1982, the principal trade association of CPE distributors argued that the RBOCs would "subsidize a pattern of predatory pricing in the competitive market with revenues from the monopoly undertaking" and engage in a "whole pattern of discriminatory cutovers, testing, maintenance and restoration of service" that would be "difficult if not impossible to prevent" through regulation, with the result that the RBOCs would quickly "overwhelm the competition and effectively monopolize the sale of CPE." Brief of the North American Telephone Association at 14, United States v. Western Elec. Co., No. 82-0198 (June 14, 1982); Reply Brief of the North American Telephone Association at 7, 9, 11, United States v. Western Elec. Co., No. 82-0192 (June 24, 1982).

[32]LLDS has attached to its pleading a pamphlet detailing a hodgepodge of allegedly anticompetitive acts by the Bell companies since divestiture. The Bell companies have responded in detail to these allegations. See Response of the Bell Companies to the Anonymous Pamphlet Entitled "Anticompetitive and Anticonsumer Practices of the Regional Bell Companies." (July 29, 1993). Even more important, however, is the lack of any suggestion that the Bell companies have been able to impede competition (i.e., obtain market power) as a result.

to a 1990 assessment by a leading trade association, all the BOCs combined have achieved sales of only $1.8 billion -- about 10 percent of the entire CPE marketplace (including voice and data CPE).[33]

Opportunities for discriminatory interconnection, improper tariffing, or cross subsidy may be richer in the PBX market than in any other. Moreover, BOC-provided Centrex services compete directly with PBX services, so the PBX market would seem to offer the greatest incentives to the BOCs to practice exclusionary tactics. But PBX distribution today remains intensely competitive. In 1989, the seven BOCs combined accounted for less than 13 percent of PBX distribution.[34] Furthermore, as of 1990, there were only about 10 million Centrex lines as compared to 25 million lines in the PBX installed base.[35] Since 1984, Centrex lines have comprised only about 15 percent of the total Centrex/PBX lines.[36]

The picture is similar in commercial mobile services. Paging services are provided by many different companies. By late 1990, an estimated 1,000 U.S. pager services were in operation.[37] Only one company serves more than 10 percent of paging subscribers, and

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[33]NATA, 1990 Telecommunications Market Review and Forecast 59 (1990).

[34]Id. at 100, Table 30 (at 114), Figure 21 (at 106).

[35]NATA, 1991 Telecommunications Market Review and Forecast 98-100 (2d ed. 1991).

[36]Id. at 99.

[37]R. Richards, Pager Companies Count on Masses to Answer Call of Cheaper Fees, USA Today, Sept. 5, 1990, at 6B.

nearly half are served by companies with market shares too small to tabulate. Today, the largest provider of paging services is not affiliated with a telco, and the industry as a whole remains highly fragmented.[38] Significantly, Judge Greene lifted the interLATA restriction from BOC paging affiliates in its entirety in 1989.[39] Competition in the paging market has remained robust.

The BOCs have also failed to dominate or otherwise impede competition in the cellular industry. Today, McCaw Cellular is, by any measure, the largest cellular telephone company in the United States. GTE/Contel ranks second. McCaw and GTE both overshadow even the largest Bell company affiliate, and they are first and second in terms of subscribers served, markets owned, total "POPs,"[40] and cellular revenues.[41] The independents, taken together, control almost half of the U.S. market.[42]

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[38]See RCR Top-20 Radio Common Carriers, RCR Publications, Inc., Oct. 21, 1991. According to a 1989 report by Telocator, "[r]adio common carriers collectively serve about 60 percent of the paging market. Private systems (e.g., hospitals, hotels) serve another 15 percent; telephone companies have less than 30 percent of the business." Bean, Paging Outlook 1995, Telocator, Jan. 1989, at 20.

[39]Memorandum and Order, United States v. Western Elec. Co., No. 82-0192 (D.D.C. Feb. 16, 1989).

[40]A POP is a measurement of cellular market potential. It is derived by multiplying the population in the license area by the company's share of a license.

[41]GTE-Contel Merger Creates USA's Second-largest Cellular Operator, FinTech Mobile Communications, July 19, 1990.

[42]Paul Kagan Assocs., 1991 Cellular Telephone Atlas (Feb. 1991); Phillips Publishing, Inc., 1991 Mobile Communications Directory (1991); Cellular Phone Industry Sets Growth Record for 1990, Chicago Tribune, Mar. 18, 1991, at 4.

The BOCs have been involved in providing some information services, such as voice mail and gateway services, since 1988; yet they have nothing resembling a dominant position in the marketplace. The same is true of the non-BOC LECs that have previously entered the long distance market, including GTE, United Telecom, and Puerto Rico Telephone. Contrary to CompTel's suggestion (Br. at 15), the FCC's experience regulating these companies is directly relevant here. The equal access/non-discrimination and cross-subsidy issues are precisely the same regardless of the size of the local exchange carrier. And GTE is actually bigger than all but one of the BOCs.[43] Yet its local exchange operations proved no boon to its long distance operations, which have now been sold.

Thus, in interexchange services and in lines of business presenting the same or greater theoretical risks of competitive abuse, regulated telephone companies (including the RBOCs, GTE, and other U.S. independents) have been allowed to provide competitive services with no actual anticompetitive results. The same dire predictions commenters offer here were made before entry into each of these fields in the past. They have been thoroughly discredited by actual experience. The evidence is clear: regulatory safeguards work.

Some commenters point out that the issues are complex and that existing rules "cannot be imported uncritically" to the long

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[43]As the D.C. Court of Appeals recently noted, "GTE itself is not the totally scattered entity envisioned by the district court. * * * GTE controls local exchange service in the entire state of Hawaii as well as in large portions of the Tampa and Los Angeles markets." United States v. Western Elec. Co., 993 F.2d at 1579.

distance market. But that is, of course, precisely the point of this rulemaking: to determine how existing regulations need to be adjusted or altered to take account of BOC entry. The BOCs stand prepared to work with the Commission and with commenters to develop an adequate set of regulatory safeguards. But for that to happen, the Commission must take the next step and initiate a rulemaking.[44] The benefits for consumers (in terms of lower prices) and for the public generally (in terms of new jobs) cannot and should not be delayed.

[44]Given its experience with GTE, United Telecom, and Puerto Rico Telephone, the Commission should be able to proceed directly to a Notice of Proposed Rulemaking. The basic issues are clear, as are the rulemaking options.